



July 7, 2003

U.S. Department of Transportation
Dockets Management Facility, Room PL-401
400 Seventh Street, SW
Washington, DC 20590

Re: Docket Nos.
FMCSA-2000-11117
Interim Final Rule: Limitations On the Issuance of Commercial Drivers
Licenses with a Hazardous Materials Endorsement
TSA-2003-14610
Security Threat Assessment for Individuals Applying for a Hazardous
Materials Endorsement for a Commercial Driver's License

The Commercial Vehicle Safety Alliance respectfully submits these comments to Docket Nos. FMCSA-2000-11117 (Limitations on the Issuance of Commercial Driver's Licenses with A Hazardous Materials Endorsement) and TSA-2003-14610 (Security Threat Assessment for Individuals Applying for a Hazardous Materials Endorsement for a Commercial Drivers License). While we commend the Federal Motor Carrier Safety Administration and Transportation Security Administration, as well as the Research and Special Programs Administration for their efforts in putting forth regulations to comply with the mandate set by the US Congress, we believe there are a number of issues that as of yet are unresolved. These issues will make it very difficult, if not impossible, to implement these regulations in an expeditious manner.

CVSA held a series of conference calls with our membership on June 26, 2003 to discuss these Interim Final Rules and their implications. Representatives from both FMCSA and TSA participated in these calls, as did many state licensing agencies. While a number of specific questions, concerns and issues were discussed it is not our intent to explicitly identify each of them as a part of this submission. Additionally, since many of the requirements will fall into the licensing agency's area of responsibility we will refrain from addressing some of these areas. Not surprisingly, much of the discussion centered on these issues. We would like to take this opportunity to recognize the American Association of Motor Vehicle Administrators for their efforts in assisting on many aspects of these rulemakings and working with state licensing agencies.

Each of our members was encouraged to file comments individually to outline issues relative to their specific jurisdictions. This letter serves to summarize some of the key issues and



themes discussed in the conference calls, which can be categorized into the following five areas:

- 1. Personnel and infrastructure**
- 2. Fingerprinting process and chain of custody**
- 3. Notification**
- 4. Timing and implementation**
- 5. Funding**

Personnel and infrastructure

These regulations will necessitate some significant changes in the way state licensing agencies and enforcement personnel conduct business. The regulations themselves and guidance currently being made available through TSA and FMCSA do not provide enough direction as to the specifics on many of these changes. Because of this it is difficult to estimate impacts in terms of personnel and infrastructure costs, but it is clear that they will be significant. Thus, it will take time and money to train personnel and make the appropriate computer system and software changes.

Fingerprinting process and chain of custody

The regulations delegate the fingerprinting collection process responsibility to the states, yet the TSA and the Department of Justice are suggesting “preferred” means with which to perform these functions. Additionally, chain of custody is a major concern. One example of how this can potentially manifest itself is that “criminal” prints are maintained forever in APHIS but “applicant” prints are not. This will create discrepancies within states for complying with other state laws. Will all of the prints taken be shared with each agency under DOT? Will they be shared with other federal agencies? Routing issues will be a major concern. The states would like to accommodate the regulations and interests of the federal government as much as possible; however, little formal guidance has been made available to assist the states in complying with the regulations.

Notification

Since there are many links in the process from the time an individual walks into a Department of Motor Vehicles to apply for a hazmat endorsement to the time he or she is notified whether the application has been denied, there is a concern that there may be mistakes along the way. Additionally, since there likely will be a mixture of data types and formats (i.e. paper and electronic, state, federal and international systems) being used, this increases the possibility of potential problems with the notification process both in terms of timeliness and integrity. This ultimately will reflect on law enforcement officers ability to do their job effectively out on the highways.



Timing and implementation

Because there are still issues outstanding regarding processes and interpretations of the regulations, as well as roles and responsibilities of all those involved, it may be difficult if not impossible to meet the dates set forth in the regulations. Additionally, many states must enact enabling legislation for implementation in their respective jurisdictions. Many states' legislatures will not convene between now and the time the regulations are set to become effective.

Funding

While the regulations authorize the states to institute a fee structure to help offset the costs for administering these new requirements, there are many unanswered questions (some of which are noted above), making it difficult to realistically estimate with any sort of certainty what these costs might be. Additionally, many of the costs will be front-loaded, meaning that they will need to be funded immediately to get the program up and running. Given the current financial conditions (crises) in most states, they will not be able to absorb these added costs.

Because of the items enumerated above, we recommend a delay in implementation of these regulations until such time where state, federal and international officials can develop a series of processes to implement and enforce the rules in a manner that promotes uniformity and integrity. As part of this recommendation, once all the details have been ironed out at the federal level, we suggest that TSA and FMCSA ask each of the states to submit an implementation plan to include resource requirements. We believe an implementation plan will help provide a more realistic assessment as to what the appropriate schedule should be and the resources necessary for implementation.

We want to be very clear that we are mindful of national security needs that dictate the need for these rules. We do not want to be viewed as being soft on terrorism or not fully supportive of Congressional intent to address the need for increased security in the CDL process. To the contrary, we believe the more time we spend on the front end properly planning for implementation the better the results will be, while at the same time improving on our ability to meet our security needs.

Because of the many facets not only of these regulations but also of the issues surrounding implementation, FMCSA and TSA may want to consider a negotiated rulemaking, or some other collaborative approach to provide additional input and feedback. Since many support the grander objective of increased security for hazardous materials transportation, taking this path may provide additional guidance to the government that may serve to produce an improved product.

We again want to commend FMCSA and TSA in their efforts, and stand ready to provide any support we can to assist.